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In re Application of :
GSCHWIND, Rene :
U.S. Application No.: 09/890,434 : DECISION ON PETITION
PCT No.: PCT/CH00/00001 : UNDER 37 CFR 1.137(a)
International Filing Date: 04 January 2000 :
Priority Date: 01 February 1999 :
Attorney's Docket No.: DT-4080 :
For: BREAD SPREAD WITH COLA FLAVOR :

This decision is issued in response to applicant's "Petition For Revival Under 37 CFR 1.137(a)" filed 15 May 2003. As discussed below, no petition fee is required.

BACKGROUND

On 04 January 2000, applicant filed international application PCT/CH00/00001 which claimed a priority date of 01 February 1999 and which designated the United States. On 10 August 2000, a copy of the international application was transmitted to the USPTO by the International Bureau ("IB").

A Demand was filed with the International Preliminary Examining Authority electing the United States prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was thirty months from the priority date, i.e., 01 August 2001.

On 30 July 2001, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 11 September 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the declaration later than 30 months after the priority date were required. This Notification was mailed to applicant's attorney's address at One World Trade Center.

On 27 January 2003, applicant submitted by facsimile a copy of a "Response To Notification And Requirement Under 35 U.S.C. 371 and 37 CFR 1.494" with accompanying materials (including a copy of an executed declaration). These materials contain a certification under 37 CFR 1.8 that they were deposited with the USPS as first class mail on 17 January 2002.

On 15 May 2003, applicant filed the petition for revival considered herein, with accompanying materials.

DISCUSSION

Because the Notification Of Missing Requirements was mailed on 11 September 2001 to the World Trade Center, and thus to an address no longer in existence, the Notification is appropriately vacated.

The application file contains a copy of the declaration filed by applicant, and applicant has paid the \$130 surcharge for filing the declaration later than thirty months after the priority date. Accordingly, the issuance of a new Notification Of Missing Requirements is not required.

Based on the above, this application is not considered to have become abandoned. Accordingly, applicant's present petition to revive the application is moot.

CONCLUSION

The petition to revive under 37 CFR 1.137(a) is **MOOT**.

The Notification Of Missing Requirements (Form PCT/DO/EO?905) mailed 11 September 2001 to One World Trade Center, New York is hereby **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the PCT Operations Division for further processing in accord with this decision. The 35 U.S.C. 371 date is 27 January 2003.



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